Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
	)	

COMMENTS OF THE

WYOMING PUBLIC SERVICE COMMISSION

Filed October 25, 2006

Wyoming Public Service Commission
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On July 25, 2006, the Federal Communications Commission (Commission) issued a Public Notice (Notice) seeking comment on an intercarrier compensation reform plan filed July 24, 2006, by the Intercarrier Compensation Task Force (Task Force) of the National Association of Regulatory Utility Commissioners (NARUC).[1] Although the intercarrier compensation reform plan, known as the "Missoula Plan", was filed by the NARUC Task Force, members of the Task Force and NARUC, for good reason, have not taken official positions on the substance of the Missoula Plan itself. The Notice established a comment date of September 25, 2006, and a reply comment date of November 9, 2006. In the Commission's Order of August 29, 2006, the comment and reply comment dates were changed to October 25, 2006, and December 11, 2006, respectively.

In its Further Notice of Proposed Rulemaking, released by the Commission in this docket on March 3, 2005, the Commission set forth five main principles any plan to reform intercarrier compensation should follow. In consideration of those stated principles, the Missoula Plan: (1) does not promote sufficient economic efficiencies; (2) fails to adequately preserve and advance universal service in a practical way for high cost, explicit-subsidy rural states like Wyoming; (3) is generally not competitively or technologically neutral; (4) fails to fully address network interconnection issues in a fair and equitable way; and (5) fails to meet any necessary and relevant legal standard. The additional goals of simplification, minimizing arbitrage, unifying switched access rates and closing loopholes are also not achieved by the Missoula Plan as it is

[1] Letter from Commissioner Tony Clark, Chair, NARUC Committee on Telecommunications, Commissioner Ray Baum, Chair, NARUC Task Force, and Commissioner Larry Landis, Vice Chair, NARUC Task Force, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, filed July 24, 2006, with the Missoula Plan as an attachment.

currently structured. The three-year phase-in or implementation period proposed by the Missoula Plan is clearly insufficient to accommodate the substantial changes it makes in the existing system of carrier-to-carrier compensation. With so many unreasonable, irresponsible and significant consequences for both consumers and telecommunications providers within Wyoming, the Wyoming Public Service Commission (WPSC) respectfully submits these comments in opposition to the Missoula Plan as currently filed with the Commission. There are many good reasons several of the major industry participants, who spent countless hours working towards a comprehensive plan to reform intercarrier compensation, left the Task Force Working Group and do not support the Missoula Plan. Though opposed to the resulting plan, the WPSC acknowledges and greatly appreciates the more than three-year effort undertaken by the NARUC Task Force in attempting to facilitate a comprehensive resolution and consensus on the complicated issues associated with reform of the existing intercarrier compensation regime.

The WPSC has been an active participant in numerous proceedings at the Commission dealing with federal universal service and other telecommunications issues. *See, e.g.*, Reply Comments of the Wyoming Public Service Comments, CC Docket No. 96-45, WC Docket No. 05-337, in response to the Commission's Notice of Proposed Rulemaking from the Tenth Circuit Court of Appeals decision in the *Qwest Corp. v FCC (Qwest II)* proceeding (March 27, 2006).[2] *Also see*, Reply Comments of the Wyoming Public Service Comments, CC Docket No. 96-45, in response to the Commission's Notice of Proposed Rulemaking from the Ninth Report and Order (April 25, 2002). *Also see*, Comments of the Wyoming Public Service Commission on the Joint

[2] *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, (released December 9, 2005); 47U.S.C. § 254(b); *Qwest Corp. v. FCC*, 398 F3d 1222 (10th Circuit 2005).

Board Recommended Decision, CC Docket No. 96-45 (December 20, 2002). Finally, *see*, Wyoming Public Service Commission Petition for Reconsideration of the Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45 (December 30, 1999). The WPSC was also an active member of the Rural Task Force created to address universal service issues.

The Missoula Plan is a step in the wrong direction for Wyoming and other states which have already implemented rebalanced rates. It is an unduly complex and arbitrary plan that attempts to achieve intercarrier compensation reform by creating an unworkable system of rules and "tracks" that only multiply the shortcomings of the current regime. Any plan to reform intercarrier compensation should be more straightforward and should use a longer time frame to create a unified access regime with more simplified rules.

In 1995, the State of Wyoming enacted the Wyoming Telecommunications Act (Wyoming Act) which reformed the existing regulatory regime in order to create a more competitive environment, implement an explicit subsidy mechanism and eliminate implicit subsidies. As a result of the Wyoming Act, local exchange and switched access rates were rebalanced. The prices for all telecommunications services are required to be cost-based and cross-subsidies are prohibited. The Carrier Common Line (CCL) rate element was not allowed by the WPSC to be part of intrastate switched access charges and one hundred percent of loop costs are directly assigned to local exchange rates with no allocation of loop costs to intrastate toll or switched access. Because of this, rates for essential local exchange services in Wyoming increased and intrastate switched access charges were substantially reduced. Implicit subsidies which had existed for years were eliminated. The Wyoming Act also created the Wyoming Universal Service Fund, an explicit subsidy mechanism, to keep local exchange service rates affordable and provide affordable access to essential business and residential telecommunications services for all Wyoming citizens. Therefore, any increase in the Subscriber Line Charge (SLC), as provided for in the Missoula Plan, is unwarranted and is a completely arbitrary and unfair burden on local exchange service customers in Wyoming. The Missoula Plan provides a means for many states to continue to cross-subsidize rates and offers an incentive for continued inclusion of implicit subsidies in rate plans. Taken as a whole, the Missoula Plan preserves and even enhances revenues of the largest incumbent local exchange carriers by increasing the burden on end use customers by an estimated $6.9 billion. Currently, the Missoula Plan contains no provisions for the pass-through of any rate reductions to consumers.

The WPSC supports a more simplified regime that is uniform in its application and treats all incumbents and competitors equally. Wyoming has already moved to cost-based pricing of all local and switched access services with the CCL component removed as an access charge rate element. Under the Missoula Plan, unified access rates for some of Wyoming's carriers would create a dramatic increase in local rates that are already cost-based. With unified access rates, some Wyoming carriers could experience an increase in local exchange rates ranging from 16 to 68 percent inclusive of the proposed SLC increases. The WPSC is concerned the rate disparity between rural carriers and non-rural carriers serving rural areas will be exacerbated by the Missoula Plan. The Early Adopter Fund is a false "incentive" mechanism to entice certain state commissions like the WPSC to adopt this plan. The Early Adopter Fund is clearly insufficiently defined at this time to encourage any state commission to cooperate. The initial estimates for the funds necessary from the Early Adopter Fund are functionally and operationally inadequate. In many exchanges throughout Wyoming, the non-rural carrier is serving rural areas with high costs and population densities similar to those served by incumbent rural carriers.

We support the Missoula Plan's proposed treatment of Phantom Traffic and access to and use of the network by Voice over Internet Protocol (VoIP) providers. However, opportunities for arbitrage still exist under the Missoula Plan because it creates different switched access and reciprocal compensation rates for Track 1, 2 and 3 companies.

Equally important to a fair and workable plan for reforming intercarrier compensation should be the commitment of interexchange carriers to share the real and substantial reductions in switched access charges contained in the Missoula Plan with incumbent local exchange carriers, competitive local exchange carriers and especially end use consumers. Based on industry estimates, approximately $6 billion would be available to large incumbent providers in reduced access charges which should be passed-on to consumers. However, nothing in the Missoula Plan requires or even provides for a pass through of these substantial savings. The WPSC urges the Commission to insure that any reciprocal compensation plan be equitable to all carriers involved. Under the Missoula Plan, there are instances in which an incumbent carrier could end up making reciprocal compensation payments to other carriers higher than the local rate charged by the incumbent carrier for corresponding service to a local customer.

As to the universal service aspects of the NARUC Intercarrier Compensation Task Force Plan previously presented to the Commission, the WPSC again emphasizes its support for the universal service principles contained in that Task Force Plan. The first principle calls for technological neutrality in universal service funding and provides that the list of services designated for support should be determined through an ongoing process. The second principle states that support provided to high-cost rural areas should not be based on whether that area is served by a "rural" or "non-rural" carrier. In other words, the correct comparison is between rural areas of rural carriers and the rural areas of non-rural carriers and should be made on the facts. The real difference should be the areas served, not the type of carrier serving the area. This principle mirrors the arguments and evidence presented many times by the WPSC to the Commission with respect to local exchange carriers in Wyoming.

CONCLUSION

The Missoula Plan is inconsistent with and fails to meet the very goals set by the Commission in its consideration of any plan to reform intercarrier compensation. The WPSC opposes the preemptive nature of the Missoula Plan as it inappropriately intrudes upon state commission jurisdiction. The Missoula Plan does not preserve state commission authority over intrastate access and reciprocal rates, which are of fundamental importance to the WPSC and Wyoming consumers. The final version of the Missoula Plan contains too much compromise and deference to the positions and goals of a few of the largest incumbent local exchange carriers. The Missoula Plan does not adequately address competition for new services or the needs and concerns of the consumers or the various rural and non-rural telecommunications providers serving in Wyoming. The Missoula Plan contains unwarranted and unnecessary rate increases for consumers in Wyoming through the proposed SLC increases and the increases in the federal Universal Service Fund surcharge required to fund the Early Adopter Fund and the

Restructure Mechanism. The Missoula Plan proposes solutions which would be unfortunate and unreasonable for most consumers, competitors and ultimately the overall telecommunications industry in this country. The Missoula Plan is hugely expensive and extremely complex. It would be administratively burdensome to state commissions and competitors. Generally, the Missoula Plan fails to eliminate disparity in intercarrier rates; does not provide for a sharing of the burdens imposed by the Plan; unreasonably increases local exchange rates; and ultimately results in unsustainable increases in the federal Universal Service Fund.

For the reasons stated above, the WPSC urges the Commission to reject the Missoula Plan. The WPSC would, however, support a separate, stand alone proceeding to address and bring resolution to the very important and timely issues of Phantom Traffic and access to and use of the network by VoIP providers as presented in the Missoula Plan.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF WYOMING

Kathleen A. Lewis

Kathleen A. Lewis, Deputy Chair

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